

The whole Tryal and Examination of *Henry Smith*, Gent. who was Try'd at the King's-Bench, this 10th of February, 1718 for killing one *William Lee*, Gent. in the Tholliel of the City of Dublin.

TH E first Evidence for the King was *Thomas Archbold*, a Boy of 12 Years of Age, who before he was Sworn, was examin'd whether or no he knew the ninth Commandment, who answer'd, Thou shalt not bear false Witness against thy Neighbour, and then being Sworn, he was ask'd whether he knew the Prisoner, and when, or what day of the Week he was in his Masters House, who said it was of a Saturday, the Court desired him to recollect his Memory, he again said that it was on a Thursday; then the Court ask'd him if he remembered what Day of the Week the said *Lee* was Kill'd, he said that it was on a Wednesday, and that his Reason for remembering so well was, because it was of a Market Day; the Court ask'd him if the said *Smith* and *Lee* were at his Master's house that Day, and what pass'd between them, and where his Master liv'd, who said that his Master liv'd in Christ Church Yard; that on a Wednesday about a Fortnight ago they both came to his Master's House, that the said *Smith* desir'd to shew him a Room up Stairs, the said *Smith* went foremost, desiring *Lee* to follow him, that *Lee* told him that he wou'd not, unless that *Smith* should Swear the Devil take him if he wou'd not pay him a Crown he ow'd, that *Smith* said he would Pay him upon Honour, that upon the same, when *Lee* refused to go up Stairs, *Smith* came down a second time to importune him to go up but *Lee* would not go, that the 3d time *Smith* went up Stairs into the Room, and the Boy going up after him he found *Smith* with his Sword drawn, who told the Boy that he was examining whether his Sword was broak; that the Boy suspecting they were going to Fight, he ran down Stairs and told his Master what he had seen, that *Smith* going down again for *Lee*, *James Dwyer* the Boy's Master, told them that they must not go together before they delivered him their Swords which they both refus'd to do, the Court ask'd the Boy in what sort of a Temper the said *Smith* and *Lee* were when *Lee* went off, who answer'd that *Smith* was Laughing and Smiling, and that *Lee* was Huffing and look'd Pale and Angry, and that he had no more to say.

The 2d Evidence was *James Dwyer* the said Boys Master, who being Sworn said, that he keeps a Publick House in Christ Church Yard, and that on Wednesday the 28th. of January last, the said *Smith* and *Lee* came to his House, being both strangers to him, he was minding other Guests, until the Boy gave him Notice that the two Young Gentlemen were going to Fight, that he came and held them both by their Sleeves, and desir'd they would deliver him their Swords before they went together, which they both refusing, the said *Lee* went off, that to prevent their going together, he prevailed with *Smith* to stay and take share of a Pint of Wine, that in the drinking of the Wine, *Smith* ask'd him if he did not know him to be the Son of Mr. *Smith* at the Sun in *Smith* field; that when they drank their Wine, *Dwyer* desir'd *Smith* to go out the back Way to prevent further Mischief, but that *Smith* told him all was over.

That *Smith* went off Smiling, and as he believed no way Inclined to Mischief, but that *Lee* went off in a great Passion and much Concern'd; that in about half an Hour after he saw the said *Lee* Dead at the Tholliel; but that he knew no more of the matter.

The 3d Evidence for the King was *James Mulligan* a Soldier in the Army, who being sworn said, that the later end of the last Month, he happened

to be at the Tholsel where he was sitting over the Table, and hearing as he thought People Wrestling, he got up in haste to look at them, that he saw the said Smith down and Lee on the top of him, holding him down, and that when Smith got upon his Feet, Lee toss'd him down again upon the Flaggs that when Smith got up the Second time they both drew their Swords, but who drew first he could not tell, that they made several passes at one another, that at the corner near Nicholas Street within the Tholsel, the said Lee received a Thrust under his right Breast, that then Smith walk'd towards Christ-Church-Lane, that Lee went out of the Tholsel into the Street, that going about four or five Paces he saw him drop his naked Sword out of his Hand, and turning back into the Tholsel and going up the Stone Stairs, he saw him throw some Blood out of his Mouth. that when he went to the Stair-Head he fell down and cried out that he was Murthered, but that he could tell no more.

That the first Evidence that the Prisoner produced in his own behalf was Mr. William Heal who upon his Oath gave a very honest peaceable Character of the said Smith, having known him these four Year past.

The 2d Evidence for the Prisoner was one Richard Brown, who upon his Oath said that at the Day aforesaid he hapen'd to be at the Tholsel, when saw the said Smith and Lee Jarring at one another, and that he heard Lee calling Smith a Scoundrel Rascal, that soon after, he saw Lee twice throwing Smith down under him, that soon after he saw them both draw at one another; but the rest of his Evidence was clear contrary to Mulligan's.

The third Evidence was one Dennis Kean, who upon his Oath said, that on the 28th of January last, he was present at the Tholsel when he saw the said Smith and Lee in a Scuffle together; that he took Notice that Lee being a bigger Man and Stronger than Smith, he twice lift up Smith and toss'd him against the Flaggs in the Tholsel, and that he saw them both draw their Swords, that Lee drew first, and that they made several Passes at one another; but that Smith still gave Way, and that he believed that beyond the Clock in the Corner, near Nicholas-street, was the Place where the said Lee received his wound, and that he knew no more.

The 4th Evidence was James Savage, who Swore much to the same Purpose as Keane did.

There were several other witnesses examin'd in the behalf of the Prisoner who Swore nothing to his Disadvantage; besides several credible Gentlemen who upon Oath, gave a very Quiet, Civil, Peaceable Character, which the Judges and Jury considering, the said Smith was brought in Guilty of Man-slaughter in his own Defence.

This is the whole and true Tryal, and all others are but Impositions upon the City.

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